

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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APPALSEED PRODUCTIONS, INC., d/b/a
APPALSONGS, CHARLES LLOYD, individually
and d/b/a FOREST FARM MUSIC, DARIUS BROOKS
d/b/a FROM D'S PEN, DAVID HOFFNER d/b/a
FIELDS OF AUTUMN PUBLISHING and HOFFNER
HAUS MUSIC, JOE HILL MUSIC, LLC, d/b/a
JOE HILL MUSIC, LAURENCE WEISS d/b/a
RHINESTONE COWBOY MUSIC CO., MARK FARNER
d/b/a CRAM RENRAFF COMPANY and R GANT MUSIC
GROUP, INCORPORATED d/b/a HELLO DARLIN' MUSIC,

Plaintiffs,

- against -

Case No. 11 CIV 5922
(PGG)

MEDIANET DIGITAL, INC., ALAN MCGLADE AND
STEPHEN BARRACLOUGH,

Defendants.

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DEPOSITION OF STEPHEN BARRACLOUGH

New York, New York

Tuesday, March 13, 2012

REPORTED BY:

Chandra D. Brown

Ref: 7048

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DEPOSITION OF STEPHEN BARRACLOUGH, taken
by Plaintiffs, pursuant to Notice, at the offices of
Arent Fox LLP, 1675 Broadway, New York, New York, on
Tuesday, March 13, 2012, commencing at 8:19 a.m.,
before Chandra D. Brown, a Registered Professional
Reporter and Notary Public within and for the State
of New York.

1 S. Barraclough - 3/13/12

2 Q The ones that were tasked with taking care
3 of the license.

4 A Possibly one or two phone calls. The
5 interaction was primarily between HFA's people
6 and MediaNet's people in Seattle.

7 Q Okay.

8 Other than the presentations from Harry
9 Fox and renewing or extending the agreement,
10 did you have any personal dealings with
11 license-related issues?

12 A Can you --

13 Q Music licensing.

14 A Personal as in -- in my capacity as CEO?

15 Q Yes.

16 A With other entities?

17 Q With the process, with other entities.

18 A I reached out to MRI and rights flow as we
19 came towards renewing.

20 Q And was that for competing bids?

21 A Yes.

22 Q But you ultimately renewed or extended?

23 A We extended, not renewed.

24 Q Okay.

25 And were -- did you -- why did you extend

1 S. Barraclough - 3/13/12

2 and not renew?

3 MR. ROMAN: Objection to form.

4 A Because I was not comfortable with the
5 business committing to Harry Fox for a further
6 two years.

7 Q Why were you not comfortable?

8 A I had been told that MRI had had a match
9 rate of 90 percent of tracks, and that that was
10 as good as a hundred percent because of all the
11 fluff in the catalog, and Harry Fox had not
12 been able to achieve that rate.

13 Q Okay.

14 And what you're saying by "match rate,"
15 90 percent match rate being able to identify
16 the publishing administrator of a recording?

17 A A publisher of a recording, yes.

18 Q That's what you're talking about in
19 matching?

20 A Yes.

21 Q And Harry Fox wasn't as good?

22 A No.

23 Q So why did you then extend with Harry Fox
24 rather than go back to MRI?

25 A A number of reasons. MRI tell you, but

1 S. Barraclough - 3/13/12

2 don't show you the evidence. So they will tell
3 you a match rate, but they won't show you the
4 detail. And I was unclear how much we would be
5 able to improve the situation with Harry Fox
6 when I first became aware of it.

7 Q Okay.

8 Do you know what percentage match rate --
9 percentage Harry Fox was getting?

10 MR. ROMAN: Objection to form.

11 A At what point in time?

12 Q During your tenure as CEO.

13 A At the beginning, amongst the
14 presentations they gave us, they showed us
15 figures that sore an overall match rate below
16 55 percent.

17 But a match rate by value of over
18 90 percent in terms of value of royalties
19 earned of a dollar or more over an 18-month
20 period per track. At the end of that period,
21 they had improved that match rate to 77 and a
22 half percent.

23 Q Okay.

24 So at the end of that year, they are at
25 77 percent match rate.

1 S. Barraclough - 3/13/12

2 A Yes.

3 Q And because you gave both numbers earlier,
4 started out 55 percent or less than 50 percent,
5 I think you said.

6 A No. Less than 55 percent.

7 Q Less than 55 percent match rate.

8 But that less than 55 percent was
9 generating 95 percent of the royalties?

10 A Over 90 percent of royalties earned per
11 track of a dollar or more.

12 Q Okay. So I'm just trying to understand
13 exactly what we're talking about here.

14 So Harry Fox didn't know who the
15 publishers were initially of over 45 percent of
16 MediaNet's catalog?

17 MR. ROMAN: Objection to form.

18 Q Is that correct?

19 A As I understand, they were unable to match
20 that.

21 Q Okay.

22 And I would assume because they don't know
23 who the publishers are.

24 A I would assume.

25 Q There is no licenses in place.

1 S. Barraclough - 3/13/12

2 MR. ROMAN: Objection to form.

3 A The mechanics of it, I am not aware.

4 Q Did you ever inquire what that meant?

5 MR. ROMAN: Objection to form.

6 Q MediaNet -- Harry Fox comes over for their
7 first presentation to you. And shows that they
8 have a match rate of under 55 percent.

9 A Yes.

10 Q Did you ask what that means?

11 A I did.

12 Q And what did they tell you?

13 A They told me that they were unable to pay
14 publishers royalty on the unmatched proportion.

15 Q Okay.

16 So they don't know who it is?

17 A Yes.

18 Q Did you inquire as to whether licenses
19 existed for that 45 percent?

20 A I inquired how they could improve that
21 match rate.

22 Q Okay.

23 Did you take any steps to remove that
24 content until it could be matched?

25 A I did not.

1 S. Barraclough - 3/13/12

2 Q Did you ever ask anyone whether MediaNet
3 had the right to use that 45 percent of
4 unmatched?

5 MR. ROMAN: Objection to form.

6 A I was focused on is there a sustainable
7 business here now or one that we can create
8 quickly; otherwise, the business would be
9 closed down.

10 Q Right.

11 But I mean understanding the CEO, while
12 you're there, it all comes under you.

13 A Correct.

14 Q So you didn't -- never took it down, never
15 directed somebody to figure out why we don't
16 know this. But you worked with Harry Fox to
17 see how it can improve?

18 A My focus was to get to the 90 percent
19 match rate. As we improved the match rate of
20 that six-month period, then we were able to
21 identify the tracks. We were able to basically
22 account for those unpaid royalties since the
23 beginning of MediaNet's agreement with Harry
24 Fox.

25 Q Okay.

CERTIFICATION

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

I, CHANDRA D. BROWN, a Notary Public for
and within the State of New York, do hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and that such
examination is a true record of the testimony given
by that witness.

I further certify that I am not related to
any of the parties to this action by blood or by
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand the 23rd day of March, 2012.

CHANDRA D. BROWN, RPR, CLR